

FILED

MAR 09 2016

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALDEN LAMONT MOORE,

Petitioner,

vs.

RONALD DAVIS, Warden,

Respondent.

No. C 15-5511 LHK (PR)

ORDER TO SHOW CAUSE WHY
PETITION SHOULD NOT BE
DISMISSED FOR FAILURE TO
EXHAUST STATE REMEDIES

Petitioner, a California state prisoner proceeding *pro se*, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254.¹ Petitioner has paid the filing fee. The court issues an order to show cause for petitioner to demonstrate why the petition should not be dismissed without prejudice because he has not exhausted his state court remedies.

BACKGROUND

In the underlying federal petition, petitioner challenges the criminal conviction he sustained in 2006 in the Superior Court of Alameda County. Petitioner concedes that he has not raised any claims in the California Supreme Court.

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Ronald Davis, the current warden of San Quentin State Prison, where petitioner is currently incarcerated, is hereby SUBSTITUTED as respondent.

1 **DISCUSSION**

2 Prisoners in state custody who wish to collaterally challenge either the fact or length of
3 their confinement in federal habeas corpus proceedings are first required to exhaust state judicial
4 remedies, either on direct appeal or through collateral proceedings, by presenting the highest
5 state court available with a fair opportunity to rule on the merits of each and every claim they
6 seek to raise in federal court. 28 U.S.C. § 2254(b)-(c).

7 Petitioner has conceded that he has not presented the California Supreme Court with an
8 opportunity to rule on the merits of the claims he presents in the underlying federal habeas
9 petition. Thus, the court issues an order to show cause for petitioner to demonstrate why the
10 petition should not be dismissed without prejudice to refiling once he exhausts his federal claims
11 in state court.

12 **CONCLUSION**

13 Petitioner shall file a response to this order to show cause **within thirty (30) days** of the
14 filing date of this order addressing: (1) whether he has a state habeas petition, appeal, or other
15 post-conviction proceeding now pending before the state court; and, if so, (2) which level of
16 state court and whether the underlying petition challenges the same commitment at issue in his
17 pending state case(s). **Failure to file a timely response will result in the court dismissing the**
18 **instant petition without prejudice for failure to exhaust state court remedies.**

19 It is petitioner's responsibility to prosecute this case. Petitioner must keep the court and
20 all parties informed of any change of address by filing a separate paper captioned "Notice of
21 Change of Address." He must comply with the court's orders in a timely fashion. Failure to do
22 so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
23 Civil Procedure 41(b).

24 IT IS SO ORDERED.

25 DATED: 3/8/2016

26 Lucy H. Koh
LUCY H. KOH
United States District Judge